



**STATE OF MISSOURI  
MISSOURI DEPARTMENT OF HEALTH & SENIOR SERVICES  
920 WILDWOOD DRIVE, P.O. BOX 570  
PROCUREMENT UNIT  
JEFFERSON CITY, MO 65102  
REQUEST FOR QUOTATION**

**RFQ NO. 580100172  
TITLE: Male Condoms  
ISSUE DATE: 6/18/10**

**BUYER: Ralph Poettgen  
PHONE NO.: (573) 751-6020  
E-MAIL: ralph.poettgen@dhss.mo.gov**

**RETURN BID NO LATER THAN: 6/29/10**

**FAX BID TO: 573-522-9052  
MISSOURI DEPARTMENT OF HEALTH & SENIOR SERVICES  
ATTN: RALPH POETTGEN**

**CONTRACT PERIOD: Date of Award through One Year**

**DELIVER SUPPLIES/SERVICES FOB DESTINATION TO THE FOLLOWING ADDRESSES:**

**Missouri Department of Health & Senior Services  
General Services Warehouse  
323 Veterans Lane  
Jefferson City, MO 65101**

The bidder hereby declares understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all requirements and specifications contained herein and the Terms and Conditions Request for Quotation. The bidder further agrees that the language of this RFQ shall govern in the event of a conflict with his/her bid. The bidder further agrees that upon receipt of an authorized purchase order from the Missouri Department of Health & Senior Services or when this RFQ is countersigned by an authorized official of the State of Missouri, a binding contract shall exist between the bidder and the State of Missouri.

**SIGNATURE REQUIRED**

AUTHORIZED SIGNATURE		DATE	
PRINTED NAME		TITLE	
COMPANY NAME			
MAILING ADDRESS			
CITY, STATE, ZIP			
FEDERAL EMPLOYER ID NO.		SOCIAL SECURITY NO. IF FEDERAL EMPLOYER ID NO. NOT APPLICABLE.	
PHONE NO.	FAX NO.	E-MAIL ADDRESS	

**NOTICE OF AWARD (STATE USE ONLY)**

ACCEPTED BY STATE OF MISSOURI AS FOLLOWS:		
CONTRACT NO.	VENDOR NO.	CONTRACT PERIOD
BUYER		DATE

## **1. INTRODUCTION**

### **1.1 Purpose:**

- 1.1.1 This document constitutes a Request for Quotation (RFQ) from prospective bidders for the establishment of a contract for condoms on an as needed, if needed basis, for the Missouri Department of Health & Senior Services, Division of Community and Public Health, located in Jefferson City, Missouri, in accordance with the requirements and provisions stated herein. Hereinafter, Missouri Department of Health & Senior Services, Division of Community and Public Health shall be referred to as the State Agency.

### **1.2 RFQ's Intent:**

- 1.2.1 The intent of this RFQ is to offer the State Agency a vehicle to procure condoms in case quantities at a cost savings to the State of Missouri.

### **1.3 Contact:**

- 1.3.1 Any and all communication from bidders regarding specifications, requirements, competitive bid process, etc. related to the bid document must be referred to the Buyer of Record identified on the first page of this document.

## **2. CONTRACTUAL REQUIREMENTS**

### **2.1 Contract Period:**

- 2.1.1 The original contract period shall be as stated in the RFQ. The contract shall not bind, nor purport to bind, the State for any contractual commitment in excess of the original contract period. The State Agency shall have the right, at its sole option, to renew the contract for three (2) additional one-year periods, or any portion thereof. In the event the State Agency exercises such right, all terms and conditions, requirements and specifications of the contract shall remain the same and apply during the renewal period, pursuant to applicable option clauses of this document.

### **2.2 Price:**

- 2.2.1 All prices shall be as indicated on the Pricing Page. The State Agency shall not pay nor be liable for any other additional costs including but not limited to taxes, shipping charges, insurance, interest, penalties, termination payments, attorney fees, liquidated damages, etc.

### **2.3 Renewal Periods:**

- 2.3.1 If the option for renewal is exercised by the State Agency, the contractor shall agree that the prices for the renewal period shall not exceed the maximum percent of increase for the applicable renewal period stated on the Pricing Page of the contract.
- 2.3.2 If renewal percentages are not provided, then prices during renewal periods shall be the same as during the original contract period.

- 2.3.3 The State Agency does not automatically exercise its option for renewal based upon the maximum percent of increase and reserves the right to offer or to request renewal of the contract at a price less than the maximum percent of increase stated.

## **2.4 Contractor Liability:**

- 2.4.1 The contractor shall be responsible for any and all personal injury (including death) or property damage as a result of the contractor's negligence involving any equipment or service provided under the terms and conditions, requirements and specifications of the contract. In addition, the contractor assumes the obligation to save the State of Missouri, including its agencies, employees, and assignees, from every expense, liability, or payment arising out of such negligent act. The contractor also agrees to hold the State of Missouri, including its agencies, employees, and assignees, harmless for any negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the contractor under the terms of the contract.
- 2.4.2 The contractor shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the State of Missouri, including its agencies, employees, and assignees.
- 2.4.3 Under no circumstances shall the contractor be liable for any of the following: (1) third party claims against the State for losses or damages (other than those listed above); (2) loss of, or damage to, the State's records or data; or (3) economic consequential damages (including lost profits or savings) or incidental damages, even if the contractor is informed of their possibility.

## **2.5 Subcontractors:**

- 2.5.1 Any subcontracts for the products/services described herein must include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by the contractor and the State of Missouri and to ensure that the State of Missouri is indemnified, saved, and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontract in those matters described in the contract between the State of Missouri and the contractor. The contractor shall expressly understand and agree that he/she shall assume and be solely responsible for all legal and financial responsibilities related to the execution of a subcontract. The contractor shall agree and understand that utilization of a subcontractor to provide any of the products/services in the contract shall in no way relieve the contractor of the responsibility for providing the products/services as described and set forth herein. The contractor must obtain acknowledgement from the State of Missouri prior to establishing any new subcontracting arrangements and before changing any subcontractors.

## **2.6 Termination:**

- 2.6.1 The State Agency reserves the right to terminate the contract at any time, for the convenience of the State of Missouri, without penalty or recourse, by giving written notice to the contractor at least thirty (30) calendar days prior to the effective date of such termination. The contractor shall be entitled to receive just and equitable compensation for services and/or supplies delivered to and accepted by the State of Missouri pursuant to the contract prior to the effective date of termination.

## **2.7 Assignment:**

- 2.7.1 The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the State Agency.
- 2.7.2 The contractor shall agree and understand that, in the event the State Agency consents to a financial assignment of the contract in whole or in part to a third party, any payments made by the State of Missouri pursuant to the contract, including all of those payments assigned to the third party, shall be contingent upon the performance of the prime contractor in accordance with all terms and conditions, requirements and specifications of the contract.

## **2.8 Insurance:**

- 2.8.1 The contractor shall understand and agree that the State of Missouri cannot save and hold harmless and/or indemnify the contractor or employees against any liability incurred or arising as a result of any activity of the contractor or any activity of the contractor's employees related to the contractor's performance under the contract. Therefore, the contractor must acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect the State of Missouri, its agencies, its employees, its clients, and the general public against any such loss, damage and/or expense related to his/her performance under the contract.

## **2.9 Estimated Quantities:**

- 2.9.1 The State Agency anticipates placing 1 order per year for approximately 80 cases per order (1,000 per case) for male condoms. However, orders for larger or smaller amounts may also be placed. The State of Missouri makes no guarantees about single order quantities or total aggregate order quantities. The bidder shall quote the quantities listed on the Pricing Page.

## **2.10 Replacement of Damaged Product:**

- 2.10.1 The contractor shall be responsible for replacing any item received in damaged condition at no cost to the State of Missouri. This includes all shipping costs for returning non-functional items to the contractor for replacement.

## **2.11 Substitutions:**

- 2.11.1 The contractor shall not substitute any item(s) that has been awarded to the contractor without the prior written approval of the State Agency.

## **2.12 Contract:**

- 2.12.1 A binding contract shall consist of: (1) the RFQ and any amendments thereto, (2) the contractor's response (bid) to the RFQ, (3) clarification of the bid, if any, and (4) the State Agency's acceptance of the bid by "notice of award" or by "purchase order." All Exhibits and Attachments included in the RFQ shall be incorporated into the contract by reference.
- 2.12.2 The notice of award does not constitute a directive to proceed. Before providing equipment, supplies and/or services, the contractor must receive a properly authorized purchase order.

- 2.12.3 The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein.
- 2.12.4 Any change to the contract, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the State Agency or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence from the State Agency, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.

### **2.13 Payment Terms:**

- 2.13.1 All payment terms shall be as stated in the Terms and Conditions of the contract (see paragraph 9, "Invoicing and Payment") unless otherwise addressed in the RFQ, or mutually agreed to by the state and the contractor. Payment terms should be net 30 days unless otherwise stated in the RFQ. No late charges shall be applied which are not in compliance with Chapter 34.055 RSMo. This statute may be found at <http://www.moga.state.mo.us/STATUTES/STATUTES.HTM>.
- 2.13.2 All invoices shall be sent to:  
Missouri Department of Health and Senior Services  
Bureau of HIV, STD, and Hepatitis  
930 Wildwood Drive, P.O. Box 570  
Jefferson City, MO 65102-0570
- 2.13.3 If the Contractor has not already submitted a properly completed State Vendor Automated Clearing House Electronic Funds Transfer (ACH/EFT) Application for deposit into a bank account of the Contractor, such Application shall be completed and submitted per this section, as the Department will make payments to the Contractor through Electronic Funds Transfer. Payment will be delayed until the ACH/EFT application is completed and approved.

A copy of State Vendor ACH/EFT Application and completion instructions may be obtained from the Internet at: <http://www.oa.mo.gov/purch/vendorinfo/vendorach.pdf>.

The Contractor must fax the ACH/EFT Application to: Office of Administration, Division of Accounting at 573-526-9813.

### **2.14 Preprinted Marketing Materials:**

- 2.14.1 The bidder may submit preprinted marketing materials with the bid. However, the bidder is advised that such brochures normally do not address the needs of the evaluators with respect to the technical evaluation process and the specific responses which have been requested of the bidder. The bidder is strongly discouraged from relying on such materials in presenting products and services for consideration by the State.

### **2.15 Description of Product:**

- 2.15.1 The bidder should present a detailed description of all products and services proposed in the response to this Request for Quotation. It is the bidder's responsibility to make sure all products proposed are

adequately described. It should not be assumed that the evaluator has specific knowledge of the products proposed; however, the evaluator does have sufficient technical background to conduct an evaluation when presented complete information.

## **2.16 Request for Samples:**

- 2.16.1 The bidder may be asked to provide a sample of the condom they are bidding on the pricing page, along with detailed specifications about their product before an award is made.
- 2.16.2 The samples shall be submitted to the State of Missouri at no additional cost and shall not be returned to the bidder.
- 2.16.3 The bidder should identify the sample with the company name, brand and stock number.

## **2.17 Determination for Award:**

- 2.17.1 The award of contract shall be made to the lowest priced responsive bidder. The State of Missouri reserves the right to reject any bid which is determined unacceptable for reasons which may include but are not necessarily limited to: 1) failure of the bidder to meet mandatory general performance specifications; and/or 2) failure of the bidder to meet mandatory technical specifications; and/or, 3) receipt of any information, from any source, regarding delivery of unsatisfactory product or service by the bidder within the past five years; and/or, 4) failure of the bidder to provide a sample condom if requested. As deemed in its best interests, the State of Missouri reserves the right to clarify any and all portions of any bidder's offer.

## **2.18 Cost Evaluation:**

- 2.18.1 The evaluation shall cover the original contract period plus renewal periods. Bids will be evaluated on the average cost for 80,000 50,000 and 20,000 condoms. The cost evaluation shall include all mandatory requirements. However, the State of Missouri reserves the right to evaluate optional items, if deemed necessary.

## **2.19 Open Competition:**

- 2.19.1 Any manufacturer's name, trade names, brand names, information and/or catalog numbers listed in a specification and/or requirement are for informational purposes only and are not intended to limit competition.
- 2.19.2 The bidder may offer any brand of product that meets or exceeds the specifications. In addition to identifying the manufacturer's name and product number, the bidder must explain in detail how their product meets or exceed the specifications. Bids, which do not comply with the requirement and the specifications, are subject to rejection without clarification.

## **2.20 Firm, Fixed Pricing:**

- 2.20.1 The bidder must submit a firm, fixed price for the supplies specified on the Pricing Page of this RFQ. The firm, fixed price must include all shipping and handling charges.

## **2.21 Unit of Measure:**

2.21.1 If the unit of measure specified on the attached pricing pages is different than the manner in which the bidder offers that item, then the unit of measure being proposed by the bidder must be clearly identified on the pricing page.

2.21.2 In the cost evaluation, a unit price conversion will be done to fairly evaluate bid prices. However, for any resulting contract, the unit of measure bid will be the unit of measure awarded. Bidders are encouraged to contact the Buyer **prior to** submission of their bid to discuss anticipated unit modifications. The bidder is cautioned that the State of Missouri reserves the right to clarify the unit of measure modification or to disqualify the bid for that line item if the unit of measure modification is not deemed appropriate or in the best interests of the State of Missouri.

## **2.22 Bid Detail Requirements and Deviations:**

2.22.1 It is the bidder's responsibility to submit a bid that meets all mandatory specifications stated herein. The bidder should clearly identify any and all deviations from both the mandatory and desirable specifications stated in the RFQ. Any deviation from a mandatory requirement may render the bid non-responsive. Any deviation from a desirable specification may be reviewed by the State as to its acceptability and impact on competition.

2.22.2 **Bidders should note:** A descriptive brochure of the model bid may not be acceptable as clear identification of deviations from the written specification.

## **2.23 Compliance with Terms and Conditions:**

2.23.1 The bidder is cautioned when submitting pre-printed terms and conditions or other type material to make sure such documents do not contain other terms and conditions which conflict with those of the RFQ and its contractual requirements. The bidder agrees that in the event of conflict between any of the bidder's terms and conditions and those contained in the RFQ, that the RFQ shall govern. Taking exception to the State's terms and conditions may render a bidder's bid non-responsive and remove it from consideration for award.

**PRICING PAGE**

<b><u>LINE ITEM</u></b>	<b><u>MANDATORY SPECIFICATIONS</u></b> The bidder shall conform to the following specifications contained herein:	<b><u>ESTIMATED QUANTITY</u></b>	<b><u>UNIT</u></b>	<b><u>UNIT PRICE</u></b>
001	Male Condoms: Lubricated, without Nonoxynol-9 Packed 1,000 per case  Brand: _____  Stock No.: _____  Condoms Per Case: _____	80 or more	CS	\$_____
002	Male Condoms: Lubricated, without Nonoxynol-9 Packed 1,000 per case  Brand: _____  Stock No.: _____  Condoms Per Case: _____	50 to 79	CS	\$_____
003	Male Condoms: Lubricated, without Nonoxynol-9 Packed 1,000 per case  Brand: _____  Stock No.: _____  Condoms Per Case: _____	20 to 49	CS	\$_____

**Minimum Orders:**

The bidder must state below any minimum order requirements:

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**Delivery:**

The desired delivery is fourteen (14) calendar days after the receipt of a properly executed order. If bidder's delivery is different, the bidder should state delivery in days after receipt of order: \_\_\_\_\_calendar days ARO.



### **PRICING PAGE (continued)**

**Regarding price increase percentages for renewals: The bidder must indicate the maximum allowable percentage of price increase applicable to the renewal option year. If a percentage is not quoted (i.e. left blank, page not returned, etc.), the State shall have the right to execute the option at the same price(s) quoted for the original contract period. Statements such as “a percentage of the then current price” or “consumer price index” are NOT ACCEPTABLE.**

**All increases shall be calculated against the ORIGINAL contract price, NOT against the previous year's price. A CUMULATIVE CALCULATION SHALL NOT BE UTILIZED. The percentage indicated shall be used in the cost evaluation to determine the potential maximum financial liability to the State of Missouri.**

### Renewal Options:

The State Agency shall have the sole option to renew the contract for three (2) one-year options, or a portion thereof, for a maximum total of two (2) additional years. The bidder must respond to the following line items regarding renewal pricing. The bidder can indicate a renewal price increase by percentage, applicable to all line items, or a price decrease, also indicated by percentage and applicable to all line items. The bidder must not bid BOTH a price percentage increase and decrease for the same renewal period but must clearly indicate if the percentage is an INCREASE or a DECREASE.

**004**      **C/S Code: 96299**      **PCNT**      \_\_\_\_\_ %  
*Miscellaneous Services, General*  
 First Renewal Period  
 Renewal Option Percentage Price Adjustment  
 Bidder Must Identify below by checking appropriately as an INCREASE OR DECREASE  
 Increase: \_\_\_\_\_ OR Decrease: \_\_\_\_\_

<b>005</b>	<b>C/S Code: 96299</b> <i>Miscellaneous Services, General</i> Second Renewal Period Renewal Option Percentage Price Adjustment Bidder Must Identify below by checking appropriately as an INCREASE OR DECREASE Increase:            OR Decrease:	<b>PCNT</b> _____%
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### Order and Payment Information:

If the order and/or payment address differs from the general mailing address stated on page 1, the bidder should provide such addresses below. The bidder should also indicate the applicable phone number, fax number, e-mail address, and contact person.

### Orders Should Be Sent To:

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Payments Should Be Sent To:

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**STATE OF MISSOURI**  
**DEPARTMENT OF HEALTH AND SENIOR SERVICES**  
**TERMS AND CONDITIONS -- REQUEST FOR QUOTATION**

**1. TERMINOLOGY/DEFINITIONS**

Whenever the following words and expressions appear in a Request for Quotation (RFQ) document or any amendment thereto, the definition or meaning described below shall apply.

- a. **Agency and/or State Agency** means the statutory unit of state government in the State of Missouri for which the equipment, supplies, and/or services are being purchased by the **Department of Health and Senior Services (DHSS)**. The agency is also responsible for payment.
- b. **Amendment** means a written, official modification to an RFQ or to a contract.
- c. **Attachment** applies to all forms which are included with an RFQ to incorporate any informational data or requirements related to the performance requirements and/or specifications.
- d. **Bid Target Date and Time** and similar expressions mean the deadline required by the RFQ for the receipt of bids.
- e. **Bidder** means the person or organization that responds to an RFQ by submitting a bid with prices to provide the equipment, supplies, and/or services as required in the RFQ document.
- f. **Buyer** means the procurement staff member of the DHSS. The **Contact Person** as referenced herein is usually the Buyer.
- g. **Contract** means a legal and binding agreement between two or more competent parties, for a consideration for the procurement of equipment, supplies, and/or services.
- h. **Contractor** means a person or organization who is a successful bidder as a result of an RFQ and who enters into a contract.
- i. **Exhibit** applies to forms which are included with an RFQ for the bidder to complete and submit with the bid prior to the specified target date and time.
- j. **Request for Quotation (RFQ)** means the solicitation document issued by the DHSS to potential bidders for the purchase of equipment, supplies, and/or services as described in the document. The definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Amendments thereto.
- k. **May** means that a certain feature, component, or action is permissible, but not required.
- l. **Must** means that a certain feature, component, or action is a mandatory condition. Failure to provide or comply will result in a bid being considered non-responsive.
- m. **Pricing Page(s)** applies to the form(s) on which the bidder must state the price(s) applicable for the equipment, supplies, and/or services required in the RFQ. The pricing pages must be completed and submitted by the bidder with the bid prior to the specified bid target date and time.
- n. **RSMo (Revised Statutes of Missouri)** refers to the body of laws enacted by the Legislature which govern the operations of all agencies of the State of Missouri. Chapter 34 of the statutes is the primary chapter governing the operations of DHSS.
- o. **Shall** has the same meaning as the word **must**.
- p. **Should** means that a certain feature, component and/or action is desirable but not mandatory.

**2. APPLICABLE LAWS AND REGULATIONS**

- a. The contract shall be construed according to the laws of the State of Missouri. The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
- b. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the DHSS.
- c. The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.
- d. The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.
- e. The exclusive venue for any legal proceeding relating to or arising out of the RFQ or resulting contract shall be in the Circuit Court of Cole County, Missouri.
- f. The contractor shall only utilize personnel authorized to work in the United States in accordance with applicable federal and state laws and Executive Order 07-13 for work performed in the United States.

**3. OPEN COMPETITION/REQUEST FOR QUOTATION DOCUMENT**

- a. It shall be the bidder's responsibility to ask questions, request changes or clarification, or otherwise advise the DHSS if any language, specifications or requirements of an RFQ appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the RFQ to a single source. Any and all communication from bidders regarding specifications, requirements, competitive bid process, etc., must be directed to the buyer from the DHSS, unless the RFQ specifically refers the bidder to another contact. Such communication should be received at least five calendar days prior to the official bid target date.
- b. Every attempt shall be made to ensure that the bidder receives an adequate and prompt response. However, in order to maintain a fair and equitable bid process, all bidders will be advised, via the issuance of an amendment to the RFQ, of any relevant or pertinent information related to the procurement. Therefore, bidders are advised that unless specified elsewhere in the RFQ, any questions received less than five calendar days prior to the RFQ target date may not be answered.
- c. Bidders are cautioned that the only official position of the State of Missouri is that which is issued by the DHSS in the RFQ or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.
- d. The DHSS monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among bidders, price-fixing by bidders, or any other anticompetitive conduct by bidders which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.
- e. The DHSS reserves the right to officially amend or cancel an RFQ after issuance.

**4. PREPARATION OF BIDS**

- a. Bidders **must** examine the entire RFQ carefully. Failure to do so shall be at bidder's risk.
- b. Unless otherwise specifically stated in the RFQ, all specifications and requirements constitute minimum requirements. All bids must meet or exceed the stated specifications and requirements.
- c. Unless otherwise specifically stated in the RFQ, any manufacturer names, trade names, brand names, information and/or catalog numbers listed in a specification and/or requirement are for informational purposes only and are not intended to limit competition. The bidder may offer any brand which meets or exceeds the

specification for any item, but must state the manufacturer's name and model number for any such brands in the bid. In addition, the bidder shall explain, in detail, (1) the reasons why the proposed equivalent meets or exceeds the specifications and/or requirements and (2) why the proposed equivalent should not be considered an exception thereto. Bids which do not comply with the requirements and specifications are subject to rejection without clarification.

- d. Bids lacking any indication of intent to bid an alternate brand or to take an exception shall be received and considered in complete compliance with the specifications and requirements as listed in the RFQ.
- e. In the event that the bidder is an agency of state government or other such political subdivision which is prohibited by law or court decision from complying with certain provisions of an RFQ, such a bidder may submit a bid which contains a list of statutory limitations and identification of those prohibitive clauses which will be modified via a clarification conference between the DHSS and the bidder, if such bidder is selected for contract award. The clarification conference will be conducted in order to agree to language that reflects the intent and compliance of such law and/or court order and the RFQ. Any such bidder needs to include in the bid, a complete list of statutory references and citations for each provision of the RFQ which is affected by this paragraph.
- f. All equipment and supplies offered in a bid must be new, of current production, and available for marketing by the manufacturer unless the RFQ clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered.
- g. Prices shall include all packing, handling and shipping charges FOB destination, freight prepaid and allowed unless otherwise specified in the RFQ.
- h. Bids, including all prices therein, shall remain valid for 90 days from bid target date unless otherwise indicated. If the bid is accepted, the entire bid, including all prices, shall be firm for the specified contract period.
- i. Any foreign bidder not having an Employer Identification Number assigned by the United States Internal Revenue Service (IRS) must submit a completed IRS Form W-8 prior to or with the submission of their bid in order to be considered for award.

## **5. SUBMISSION OF BIDS**

- a. Bids may be submitted either by a hard copy delivered or faxed to the DHSS office. All bids must (1) be submitted by a duly authorized representative of the bidder's organization, (2) contain all information required by the RFQ, and (3) be priced as required. Delivered or faxed bids should be received in the DHSS office prior to the target time and date specified in the RFQ.
- b. The envelope or container containing a bid should be clearly marked on the outside with (1) the official RFQ number and (2) the official target date and time. Different bids should not be placed in the same envelope, although copies of the same bid may be placed in the same envelope.
- c. A bid which has been delivered to the DHSS office, may be modified by signed, written notice which has been received by the DHSS prior to the official target date and time specified. A bid may also be modified in person by the bidder or its authorized representative, provided proper identification is presented before the official target date and time. Telephone or telegraphic requests to modify a bid shall not be honored.
- d. A bid which has been delivered to the DHSS office, may only be withdrawn by a signed, written notice or facsimile which has been received by the DHSS prior to the official target date and time specified. A bid may also be withdrawn in person by the bidder or its authorized representative, provided proper identification is presented before the official target date and time. Telephone, e-mail, or telegraphic requests to withdraw a bid shall not be honored.
- e. Bidders delivering or faxing a hard copy bid to DHSS must sign and return the RFQ cover page or, if applicable, the cover page of the last amendment thereto in order to constitute acceptance by the bidder of all RFQ terms and conditions. Failure to do so may result in rejection of the bid unless the bidder's full compliance with those documents is indicated elsewhere within the bidder's response.
- f. Faxed and e-mail no-bid notifications shall be accepted.

## **6. PREFERENCES**

- a. In the evaluation of bids, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri and to all firms, corporations or individuals doing business as Missouri firms, corporations or individuals. Such preference shall be given when quality is equal or better and delivered price is the same or less.
- c. In accordance with Executive Order 05-30, contractors are encouraged to utilize certified minority and women-owned businesses in selecting subcontractors.
- d. In the evaluation of bids, a service-disabled veteran business preference shall be applied in accordance with Section 34.074 RSMo.

## **7. EVALUATION/AWARD**

- a. Any clerical error, apparent on its face, may be corrected by the buyer before contract award. Upon discovering an apparent clerical error, the buyer shall contact the bidder and request clarification of the intended bid. The correction shall be incorporated in the notice of award. Examples of apparent clerical errors are: 1) misplacement of a decimal point; and 2) obvious mistake in designation of unit.
- b. Any pricing information submitted by a bidder shall be subject to evaluation if deemed by the DHSS to be in the best interest of the State of Missouri.
- c. The bidder is encouraged to propose price discounts for prompt payment or propose other price discounts that would benefit the State of Missouri. However, unless otherwise specified in the RFQ, pricing shall be evaluated at the maximum potential financial liability to the State of Missouri.
- d. Awards shall be made to the bidder whose bid (1) complies with all mandatory specifications and requirements of the RFQ and (2) is the lowest and best bid, considering price, responsibility of the bidder, and all other evaluation criteria specified in the RFQ and (3) complies with Sections 34.010 and 34.070 RSMo and Executive Order 04-09.
- e. In the event all bidders fail to meet the same mandatory requirement in an RFQ, DHSS reserves the right, at its sole discretion, to waive that requirement for all bidders and to proceed with the evaluation. In addition, the DHSS reserves the right to waive any minor irregularity or technicality found in any individual bid.
- f. The DHSS reserves the right to reject any and all bids. When all bids are non-responsive or otherwise unacceptable and circumstances do not permit a rebid, DHSS may negotiate for the required supplies.
- g. When evaluating a bid, the State of Missouri reserves the right to consider relevant information and fact, whether gained from a bid, from a bidder, from bidder's references, or from any other source.
- h. Any information submitted with the bid, regardless of the format or placement of such information, may be considered in making decisions related to the responsiveness and merit of a bid and the award of a contract.
- i. Any award of a contract shall be made by notification from the DHSS to the successful bidder. The DHSS reserves the right to make awards by item, group of items, or an all or none basis. The grouping of items awarded shall be determined by DHSS based upon factors such as item similarity, location, administrative efficiency, or other considerations in the best interest of the State of Missouri.
- j. All bids and associated documentation will be considered open records pursuant to Section 610.021 RSMo.
- k. The DHSS maintains images of all bid file material for review. Bidders who include an e-mail address with their bid will be notified of the award results via e-mail.
- l. The DHSS reserves the right to request clarification of any portion of the bidder's response in order to verify the intent of the bidder. The bidder is cautioned, however, that its response may be subject to acceptance or rejection without further clarification.

- m. Any bid award protest must be received within ten (10) calendar days after the date of award in accordance with the requirements of 1 CSR 40-1.050 (10).
- n. The final determination of contract award(s) shall be made by DHSS.

## **8. CONTRACT/PURCHASE ORDER**

- a. By submitting a bid, the bidder agrees to furnish any and all equipment, supplies and/or services specified in the RFQ, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the RFQ and any amendments thereto, (2) the contractor's response (bid) to the RFQ, (3) clarification of the bid, if any, and (4) DHSS's acceptance of the response (bid) by "notice of award" or by "purchase order." All Exhibits and Attachments included in the RFQ shall be incorporated into the contract by reference.
- c. A notice of award issued by the State of Missouri does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services for the State of Missouri, the contractor must receive a properly authorized purchase order or other form of authorization given to the contractor at the discretion of the state agency.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change to the contract, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the DHSS or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.

## **9. INVOICING AND PAYMENT**

- a. The State of Missouri does not pay state or federal taxes unless otherwise required under law or regulation.
- b. The statewide financial management system has been designed to capture certain receipt and payment information. For each purchase order received, an invoice must be submitted that references the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the DHSS.
- d. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the RFQ.
- e. The State of Missouri assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the State's rejection and shall be returned at the contractor's expense.
- f. All invoices for equipment, supplies, and/or services purchased by the State of Missouri shall be subject to late payment charges as provided in Section 34.055 RSMo.
- g. The State of Missouri reserves the right to purchase goods and services using the state purchasing card.

## **10. DELIVERY**

Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

## **11. INSPECTION AND ACCEPTANCE**

- a. No equipment, supplies, and/or services received by an agency of the state pursuant to a contract shall be deemed accepted until the agency has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The State of Missouri reserves the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The State of Missouri's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the state may have.

## **12. WARRANTY**

- a. The contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the DHSS, (2) be fit and sufficient for the purpose expressed in the RFQ, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the state's acceptance of or payment for said equipment, supplies, and/or services.

## **13. CONFLICT OF INTEREST**

- a. Officials and employees of the state agency, its governing body, or any other public officials of the State of Missouri must comply with Sections 105.452 and 105.454 RSMo regarding conflict of interest.
- b. The contractor hereby covenants that at the time of the submission of the bid the contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The contractor further agrees that during the term of the contract neither the contractor nor any of its employees shall acquire any other contractual relationships which create such a conflict.

## **14. REMEDIES AND RIGHTS**

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the State of Missouri of any existing or future right and/or remedy available by law in the event of any claim by the State of Missouri of the contractor's default or breach of contract.
- b. The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or

will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or procured by the contractor in the fulfillment of the contract with the State of Missouri.

## **15. CANCELLATION OF CONTRACT**

- a. In the event of material breach of the contractual obligations by the contractor, the DHSS may cancel the contract. At its sole discretion, the DHSS may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide DHSS within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.
- b. If the contractor fails to cure the breach or if circumstances demand immediate action, the DHSS will issue a notice of cancellation terminating the contract immediately.
- c. If the DHSS cancels the contract for breach, the DHSS reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the DHSS deems appropriate and charge the contractor for any additional costs incurred thereby.
- d. The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the state for any period in which funds have not been appropriated, and the state shall not be liable for any costs associated with termination caused by lack of appropriations.

## **16. COMMUNICATIONS AND NOTICES**

Any notice to the bidder/contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, transmitted by e-mail or hand-carried and presented to an authorized employee of the bidder/contractor.

## **17. BANKRUPTCY OR INSOLVENCY**

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify the DHSS immediately.
- b. Upon learning of any such actions, the DHSS reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

## **18. INVENTIONS, PATENTS AND COPYRIGHTS**

The contractor shall defend, protect, and hold harmless the State of Missouri, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the contractor's performance or products produced under the terms of the contract.

## **19. NON-DISCRIMINATION AND AFFIRMATIVE ACTION**

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status unless otherwise provided by law. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

- a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
- b. The identification of a person designated to handle affirmative action;
- c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
- d. The exclusion of discrimination from all collective bargaining agreements; and
- e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

If discrimination by a contractor is found to exist, the DHSS shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the DHSS until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

## **20. AMERICANS WITH DISABILITIES ACT**

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

## **21. FILING AND PAYMENT OF TAXES**

The commissioner of administration and other agencies to which the state purchasing law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise. Therefore bidder's failure to maintain compliance with chapter 144, RSMo may eliminate their bid from consideration for award.

## **22. TITLES**

Titles of paragraphs used herein are for the purpose of facilitating reference only and shall not be construed to infer a contractual construction of language.

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